

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
READOPTION OF 312 IAC 12)	Administrative Cause
GOVERNING WATER WELL)	Number: 11-002W
DRILLING AND GROUND)	
WATER)	(LSA Document #11-177(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 12 governing water well drilling and ground water. This article includes Rule 1—definitions; Rule 2—administration and application; and Rule 3— construction standards. The text of 312 IAC 12 can be accessed through the Legislative Services Agency Internet site at:

<http://www.in.gov/legislative/iac/T03120/A00120.PDF>.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to readoptions. Where the rules are being readopted in their current form without amendments the Director of the Division of Hearings may approve preliminary action. However, the Commission retained authority to take final action on recodifications.

The rules codified under 312 IAC 12 are proposed for readoption without amendment. The Director of the Division of Hearings approved preliminary action on January 3, 2011. It is the standard practice to readopt rules by article, and 312 IAC 12 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IND. CODE § 4-22-2.5-3.1

Mark Basch, Section Head, Water Rights/Use, with the Department of Natural Resources, Division of Water, was appointed as the Small Business Regulatory

Coordinator for this rule readoption. Basch provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 12:

IC 4-22-2.1-5 Statement concerning rules affecting small businesses

Estimated number of small businesses subject to this rule:

Approximately 450 water well drilling companies (850 licensed drillers) and approximately 1000 licensed plumbers are believed to be subject to the provisions of this rule.

Estimated average annual reporting, record keeping, and other administrative costs small Businesses will incur for compliance:

No annual reporting, record keeping or other administrative costs are expected to be incurred by small business for compliance with this rule.

Estimated total annual economic impact on small businesses to comply:

No annual economic impact is expected to be incurred by small business for compliance with this rule.

Justification statement of requirement or cost:

Requirements of Rule 312 IAC 12 are set forth in the provisions of IC 14-25-4.

Regulatory flexibility analysis of alternative methods:

No regulatory flexibility analysis of alternative methods was conducted by the DNR.

REVIEW UNDER IC 4-22-2.5-3.1

The continued need for the rule.

Rule 312 IAC 12 establishes minimum well construction standards for water wells as required under IC 14-25-4. Failure to comply with these minimum well construction standards preclude the owner of a nonsignificant ground water withdrawal facility from protection against water level impacts caused by a significant ground water withdrawal facility under IC 14-25-4.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

Few complaints are received by DNR from the public or small business regarding implementation of Rule 312 IAC 12, and are typically directed at the well driller's and/or plumber's lack of public notification of the provisions of 312 IAC 12 and IC 14-25-4.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

Rule 312 IAC 12 was developed in cooperation with Indiana's Ground Water Association (well drillers and pump installers) and the public which has generally resulted in easy administration and minimal compliance issues. Notification requirements by the well driller and plumber under the rule are difficult to administer by DNR, but are being addressed through the new continuing education requirements set forth in IC 25-39.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

Rule 312 IAC 12 is not believed to overlap, duplicate or conflict with other federal, state or local laws, rules, regulations or ordinances. The rule is consistent with the minimum well construction standards established by 312 IAC 13 and IC 25-39.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

Rule 312 IAC 12 was readopted in 2005 (28 IR 3661). No significant changes in technology, economic conditions or other factors in the area affected by the rule have occurred since that time.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On March 30, 2011, a “Notice of Intent to Readopt” 312 IAC 12 was posted to the *Indiana Register* at 20110330-IR-312110177RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 12 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 12, without amendment as attached in Exhibit “A” for subsequent filing with the Publisher.

Dated: June 7, 2011

Jennifer M. Kane
Hearing Officer

ARTICLE 12. WATER WELL DRILLING AND GROUND WATER

Rule 1. Definitions

312 IAC 12-1-1 Applicability

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39-2

Sec. 1. (a) The definitions in this rule apply throughout this article.

(b) The definitions contained in IC 25-39-2, 312 IAC 1, and 312 IAC 13-1 also apply to this article. (*Natural Resources Commission; 312 IAC 12-1-1; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1366; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-1-2 “Available drawdown” defined

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 2. “Available drawdown” means the distance between the static water level and the pump setting. (*Natural Resources Commission; 312 IAC 12-1-2; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-1-3 “Bedrock aquifer” defined

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 3. “Bedrock aquifer” means a consolidated water-bearing formation that has the ability to receive, store, and transmit water in amounts sufficient for the satisfaction of a beneficial use. (*Natural Resources Commission; 312 IAC 12-1-3; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-1-4 “Piezometric surface” defined

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 4. “Piezometric surface” means the level to which water will rise under its hydrostatic head in a well completed in a confined aquifer. (*Natural Resources Commission; 312 IAC 12-1-4; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-1-5 “Properly functioning well” defined

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 5. “Properly functioning well” means a nonsignificant ground water withdrawal facility that is reasonably believed to have furnished a normal supply of water until a failure that was caused by a substantial lowering of the level of ground water in the area. (*Natural Resources Commission; 312 IAC 12-1-5; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-1-6 “Saturated thickness” defined

Authority: IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 6. "Saturated thickness" means the thickness of the saturated portion of an aquifer. (*Natural Resources Commission; 312 IAC 12-1-6; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)
 312 IAC 12-1-7 "Static water level" defined

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 7. "Static water level" means the level (including seasonal fluctuations) of water in a water well that is not influenced by pumping. (*Natural Resources Commission; 312 IAC 12-1-7; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-1-8 "Unconsolidated aquifer" defined

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 8. "Unconsolidated aquifer" means geologic materials or deposits, other than bedrock, that can receive, store, and transmit water in amounts that will satisfy a beneficial use. Examples of these geologic materials and deposits include sand and gravel. (*Natural Resources Commission; 312 IAC 12-1-8; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

Rule 2. Administration and Application

312 IAC 12-2-1 Administration

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 4-21.5; IC 14-25-4; IC 25-39

Sec. 1. This article is administered for the department by the division. Administrative review of an order under this article is made to the commission under IC 4-21.5 and 312 IAC 3-1. (*Natural Resources Commission; 312 IAC 12-2-1; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-2-2 Application

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 2. (a) This article (or 310 IAC 16.5 before its repeal) applies to a water well constructed after December 31, 1991. The owner of a nonsignificant ground water facility constructed after December 31, 1991, which does not conform to the requirements of this article, is not entitled to the relief provided by IC 14-25-4.

(b) The recommended guidelines of the department contained in Information Bulletin No. 3, published at 9 IR 1242, apply to a water well constructed after December 31, 1985, through December 31, 1991. The owner of a nonsignificant ground water facility constructed during the period described in this subsection, which does not conform to the guidelines contained in Information Bulletin No. 3, is not entitled to the relief provided by IC 14-25-4.

(c) No well construction standards adopted by the commission apply to a well constructed before January 1, 1986. (*Natural Resources Commission; 312 IAC 12-2-2; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-2-3 Article subject to standards applicable to water well drilling contractors

Authority: IC 14-25-4-13

Affected: IC 14-25-4; IC 25-39

Sec. 3. (a) The well construction requirements set forth in this article are in addition to the requirements of IC 25-39 and 312 IAC 13.

(b) IC 25-39 and 312 IAC 13 control if a provision of this article conflicts with IC 25-39 or 312 IAC 13. (*Natural Resources Commission; 312 IAC 12-2-3; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1366; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-2-4 Duty of water well driller and plumbing contractor to notify; water wells not in conformance with this article

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 4. (a) A water well driller or a plumbing contractor must advise a person, for whom a ground water withdrawal facility is drilled or equipped, of the provisions of IC 14-25-4 and this article, before the ground water withdrawal facility is drilled or equipped.

(b) A person may authorize a water well driller or a plumbing contractor to drill or equip a water well in a manner that does not conform to this article if the water well is drilled or equipped in a manner which otherwise conforms to IC 25-39 and 312 IAC 13. A water well authorized under this subsection is not unlawful, but the relief provided by IC 14-25-4 is unavailable to the owner of the well. (*Natural Resources Commission; 312 IAC 12-2-4; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1367; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 12-2-5 Duty of owner of ground water withdrawal facility to provide access to division for inspections following a complaint

Authority: IC 14-10-2-4; IC 14-25-4-13

Affected: IC 14-25-4-8; IC 25-39

Sec. 5. (a) The owner of a nonsignificant ground water withdrawal facility, who files a written complaint under IC 14-25-4-8, must provide access to the facility to any employee of the department so that the employee may perform inspections appropriate under IC 14-25-4 or this article.

(b) The owner of a nonsignificant ground water withdrawal facility must also provide any other information, known to the owner, that is needed to evaluate a loss of normal supply in the water well. (*Natural Resources Commission; 312 IAC 12-2-5; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

Rule 3. Construction Standards

312 IAC 12-3-1 Water well drilling in an unconsolidated aquifer

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 1. (a) This section governs the drilling of a water well in an unconsolidated aquifer.

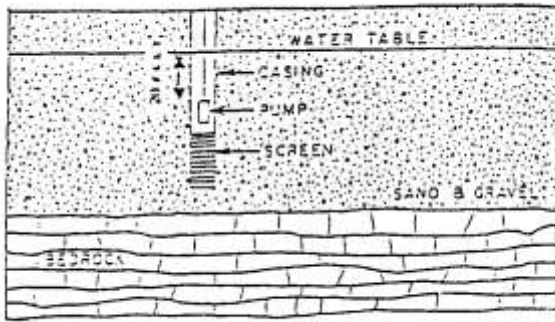
(b) A water well shall be equipped with casing that has an inside diameter of at least two (2) inches. The casing shall not be used as a suction pipe.

(c) The water well shall:

(1) be equipped with a pumping apparatus that provides at least twenty (20) feet of available drawdown; or

(2) penetrate the entire saturated thickness of the source aquifer and be equipped with a pumping apparatus that provides for the maximum available drawdown.

(d) An illustration of a suitable pump setting is as follows:



(Natural Resources Commission; 312 IAC 12-3-1; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1953; errata filed Apr 27, 1999, 4:46 p.m.: 22 IR 2883; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

312 IAC 12-3-2 Water well drilling in a bedrock aquifer

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 2. (a) This section governs the drilling of a water well in a bedrock aquifer.

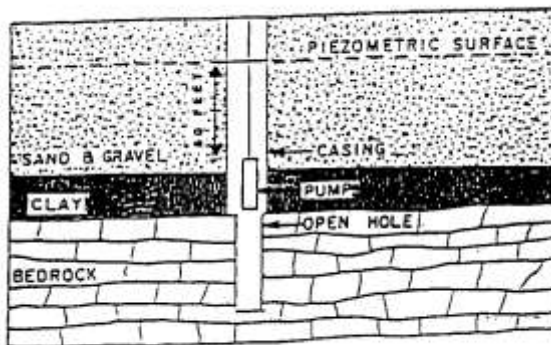
(b) A water well shall be equipped with casing which has an inside diameter of at least two (2) inches. The casing shall not be used as a suction pipe.

(c) The water well shall:

(1) be equipped with a pumping apparatus that provides at least fifty (50) feet of available drawdown; or

(2) penetrate the entire saturated thickness of the source aquifer and equipped with a pumping apparatus that provides for the maximum available drawdown.

(d) An illustration of a suitable pump setting is as follows:



(Natural Resources Commission; 312 IAC 12-3-2; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1953; errata filed Apr 27, 1999, 4:46 p.m.: 22 IR 2883; errata filed Dec 26, 2002, 9:58 a.m.: 26 IR 1565; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

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